

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

LINDSAY DROZ,

Plaintiff,

V

# BOSTON SCIENTIFIC CORPORATION.

Defendant.

CASE NO. 2:20-CV-48-RSM-DWC

ORDER ON MOTION TO  
RECONSIDER AND ON ATTORNEY  
FEES

The District Court referred this action to United States Magistrate Judge David W. Christel. Dkt. 10. Presently before the Court is Defendant Boston Scientific Corporation’s Motion for Reconsideration and Plaintiff Lindsay Droz’s Motion for Attorney Fees. Dkts. 37, 39. After review of the relevant record, the Motion for Reconsideration (Dkt. 37) is denied and the Motion for Attorney Fees (Dkt. 39) is granted-in-part.

## I. Background

Plaintiff filed a Motion to Compel on July 23, 2020. Dkt. 27. On September 1, 2020, the Court granted Plaintiff's Motion to Compel. Dkt. 36. In the Order, the Court found Plaintiff was entitled to reasonable expenses. *Id.* As Plaintiff did not provide an accounting of the expenses

1 incurred in filing the Motion to Compel, the Court directed Plaintiff to provide documentation of  
 2 the reasonable expenses incurred. *Id.* The Motion for Reconsideration and Motion for Attorney  
 3 Fees were filed in response to the Court's Order. *See* Dkts. 37, 39.

4 **II. Motion for Reconsideration (Dkt. 37)**

5 On September 15, 2020, Defendant filed a Motion for Reconsideration seeking  
 6 reconsideration of the Court's decision to grant Plaintiff reasonable expenses incurred in filing  
 7 the Motion to Compel. Dkt. 37.<sup>1</sup> Defendant asserts the Court committed manifest error when it  
 8 failed to analyze whether Defendant's opposition to the discovery requests was "substantially  
 9 justified." *Id.* The Court directed Plaintiff to file a response and, on September 23, 2020, Plaintiff  
 10 filed her Response to the Motion for Reconsideration. Dkts. 38, 41. Plaintiff argues that the  
 11 Court did not error and, even if the Court did not use the words "substantially justified,"  
 12 Defendant's position was not substantially justified. Dkt. 41.

13 Pursuant to Local Civil Rule 7(h), motions for reconsideration are disfavored and will be  
 14 denied absent a showing of manifest error or a showing of new facts or legal authority which  
 15 could not have been presented earlier with reasonable diligence.

16 Defendant fails to show a manifest error in the Court's Order granting reasonable  
 17 expenses. In the Order, the Court articulated the exceptions for denying expenses and stated, in  
 18 relevant part, that Defendant "did not meet its burden to show why the discovery request should  
 19 be denied." *Id.* at p. 8. The Court found Defendant's refusal to produce discovery was not  
 20 substantially justified in light of Defendant's documentation showing Plaintiff was evaluated and  
 21 disciplined based on her performance as compared to all sales representatives locally and

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 24 <sup>1</sup> Defendant does not seek reconsideration of the Court's decision ordering Defendant to produce the  
 disputed discovery. *See* Dkt. 37.

1 nationally. *See* Dkt. 37, pp. 7-8. The Order reflects that Defendant did not show, nor did the  
 2 Court find, Defendant's position in its nondisclosure of the requested discovery was substantially  
 3 justified. Therefore, Defendant has not shown a manifest error in the Court's decision.

4 Defendant has also not shown new facts or legal authority exist which could not have  
 5 been presented earlier. Defendant argues for the first time that its position in refusing to produce  
 6 the requested discovery was substantially justified. Dkt. 37. Defendant has provided no  
 7 explanation for not raising these arguments earlier, despite Plaintiff requesting a fee award in the  
 8 Motion to Compel. *See* Dkts. 27, 31, 37. Further, Defendant does not cite to new facts or new  
 9 legal authority that could not have been presented earlier. *See* Dkt. 37. Thus, Plaintiff has not  
 10 shown reconsideration is warranted because new facts or legal authority exist.

11 For the above-stated reasons, Defendant has not shown a manifest error or new facts or  
 12 legal authority exist which could not have been presented earlier with reasonable diligence.  
 13 Accordingly, Defendant's Motion for Reconsideration (Dkt. 37) is denied.

14 **III. Motion for Attorney Fees (Dkt. 39)**

15 The Court found Plaintiff was entitled to reasonable expenses incurred in bringing the  
 16 Motion to Compel. Dkt. 36. Plaintiff was directed to provide the Court with documentation  
 17 showing the specific amount of expenses reasonably expended on or before September 18, 2020.  
 18 *Id.* On September 18, 2020, Plaintiff filed the Motion for Attorney Fees. Dkt. 39. Defendant filed  
 19 a response to Plaintiff's Motion for Attorney Fees on September 25, 2020. Dkt. 42.

20 Plaintiff states she incurred attorney fees in the amount of \$8,381.00 and costs in the  
 21 amount of \$123.25 for a total award of \$8,504.25. Dkts. 39, 40. Defendant asserts this is  
 22 unreasonable and the fee request should be denied in full because Defendant's position was  
 23 substantially justified. Dkt. 42.

1      **A. Attorney Fees**

2      A review of Plaintiff's counsel's declaration shows Plaintiff's counsel expended 28.9  
 3 hours of work in filing the Motion to Compel. Dkt. 40, Trivett Dec. Defendant submits that, if  
 4 the Motion for Reconsideration is denied, a reasonable amount of time expended on the Motion  
 5 to Compel is 15 hours. Dkt. 42, p. 2 n.2. The Court should reduce the hours for which counsel  
 6 seeks compensation if "documentation of the hours is inadequate; if the case was overstaffed and  
 7 hours are duplicated; [or] if the hours expended are deemed excessive or otherwise unnecessary."

8      *Chalmers v. City of Los Angeles*, 796 F.2d 1205, 1210 (9th Cir. 1986).

9      Having reviewed the facts of this case, the Court agrees with Defendant that the hours  
 10 claimed are not reasonable. Expendng 28.9 hours on a straightforward motion to compel and  
 11 reply is excessive. Plaintiff's counsel spent 22.5 hours preparing and drafting the Motion to  
 12 Compel. Dkt. 41, Trivett Dec. Judges in this district have found 8 to 12 hours is reasonable for  
 13 drafting a motion to compel. *See Maclay v. M/V SAHARA*, 2012 WL 6552762, at \*3 n.6 (finding  
 14 8.8 hours a reasonable amount of time for two attorneys to prepare a 13 page motion to compel);  
 15 *Johnson v. King County Jails*, 2009 WL 981765, at \*1 (W.D. Wash. Apr. 8, 2009) (awarding 12  
 16 hours of attorney time for a motion to compel). Thus, the Court finds 22.5 hours for preparing  
 17 and drafting the Motion to Compel is excessive. The Court reduces the expended hours by 60  
 18 percent. Accordingly, the Court finds 9.0 hours is reasonable for drafting the Motion to Compel.  
 19      *Nat'l Prod., Inc. v. Aqua Box Prod., LLC*, 2013 WL 12106900, at \*4 (W.D. Wash. Mar. 15,  
 20 2013) (reducing hours spent on a motion to compel by 60 percent where the hours were  
 21 excessive and redundant).

22      Plaintiff's counsel spent 6.4 hours reviewing Defendant's response and drafting a reply.  
 23      *See* Dkt. 41, Trivett Dec. The Court finds this is reasonable. *Maclay*, 2012 WL 6552762 at \*3,

1 n.7 (finding 7.4 hours to be reasonable to draft a seven-page reply to opposing party's response  
2 to a motion to compel); *Nat'l Prod., Inc.*, 2013 WL 12106900 at \*4 (reducing hours spent on a  
3 reply in a motion to compel to 10.7 hours).

4 In sum, the Court finds 15.4 hours for filing the Motion to Compel (9 hours) and Reply  
5 (6.4 hours) is reasonable. Defendant does not assert, nor does the Court find, Plaintiff's hourly  
6 rate of \$290 is unreasonable. Therefore, the total fee award for the Motion to Compel is  
7 \$4,466.00 (15.4 hours multiplied by \$290).

8       B. Costs

9 Plaintiff requests costs in the amount of \$123.25 for copying and printing charges. Dkt.  
10 40, Trivett Dec. While Defendant does not dispute the costs, it is unclear why Plaintiff's counsel  
11 was required to incur copy and printing charges. *Id.*; *see also* Dkts. 39, 42. As Plaintiff has not  
12 adequately explained the necessity for the costs, the Court finds the costs for incurring copy and  
13 printing charges is unreasonable. The Court reduces the costs by 50 percent. Therefore, the Court  
14 awards costs in the amount of \$61.63.

15       C. Fees for Responding to Motion for Reconsideration

16 The Court declines to award additional fees for Plaintiff's counsel's drafting of a  
17 response to Defendant's Motion for Reconsideration.

18       D. Summation

19 The total calculation for Plaintiff's reasonable expenses is \$4,527.63 (\$4,466.00 in  
20 attorney fees + \$61.63 in costs).

21       **IV. Conclusion**

22 For the above stated reasons, Defendant's Motion for Reconsideration (Dkt. 37) is denied  
23 and Plaintiff's Motion for Attorney Fees (Dkt. 39) is granted-in-part. Defendant shall pay  
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1 attorney fees and costs in the amount of \$4,527.63 in full within 30 days of the date of this  
2 Order, otherwise additional sanctions may be imposed.

3 Dated this 5th day of October, 2020.

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6 David W. Christel  
7 United States Magistrate Judge  
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